No. 18-315

IN THE
Supreme Court of the United States

COCHISE CONSULTANCY, INC. AND
THE PARSONS CORPORATION,

Petitioners,

v.

UNITED STATES OF AMERICA *EX REL.* BILLY JOE HUNT,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

REPLY BRIEF FOR PETITIONERS

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RULE 29.6 STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

REPLY BRIEF FOR PETITIONERS

Respondent Billy Joe Hunt urges this Court to grant review in order to "resolve the conflicting interpretations of Section 3731(b)(2)" and "eliminate the ongoing confusion, unpredictability, and unfairness" created by that three-way circuit split. Resp. Br. 18 (capitalization altered). Hunt's plea for review eliminates any conceivable doubt that this case presents an important, recurring question of federal statutory interpretation that has divided the lower courts and that warrants resolution by this Court.

Hunt agrees with petitioners that the Eleventh Circuit's decision "created an explicit three-way split among the six circuits that have addressed how 31 U.S.C. § 3731(b)(2) of the False Claims Act ought to be construed." Resp. Br. 2; *see also id.* at 11–12. Indeed, the Eleventh Circuit itself expressly acknowledged that its decision to permit relators to rely on Section 3731(b)(2)'s statute of limitations in cases in which the United States has not intervened was "at odds with the published decisions of two other circuits," the Fourth and the Tenth. Pet. App. 21a; *see also* Pet. 15 (discussing unpublished decision from the Fifth Circuit agreeing with the Fourth and Tenth Circuits). The Eleventh Circuit then exacerbated that circuit split by holding, in direct conflict with the Third and Ninth Circuits, that Section 3731(b)(2)'s statute of limitations begins to run when the United States government, rather than the relator, becomes aware of the alleged fraud. Resp. Br. 11–12; *see also* Pet. App. 30a. All parties agree that this division in authority has serious real-world consequences. As Hunt recognizes, the circuits'

divergent positions mean that the timeliness of a False Claims Act suit may be "determined by the accident of geography rather than a uniform standard set by Congress." Resp. Br. 18; *see also* Pet. 18–19.

Not surprisingly, however, the parties disagree about the correct interpretation of Section 3731(b)(2). Hunt disputes petitioners' position that the Eleventh Circuit's decision departs from the interpretive principles this Court applied when construing Section 3731(b) in *Graham County Soil & Water Conservation District v. United States ex rel. Wilson*, 545 U.S. 409 (2005). In Hunt's view, the Eleventh Circuit's decision does not produce "absurd" results but is instead "entirely consistent with the congressional purpose encompassed by the False Claims Act to encourage the recoupment of stolen taxpayer funds." Resp. Br. 13; *see also id.* at 14–17. But Hunt ignores the fact that permitting relators to wait up to ten years to file suit under Section 3731(b)(2)—rather than requiring them to file suit within six years of the alleged violation under Section 3731(b)(1)—gives relators an incentive to delay filing suit in an effort to maximize recoveries, thereby undermining Congress's interest in "combat[ting] fraud quickly and efficiently." *United States ex rel. Sanders v. N. Am. Bus Indus., Inc.*, 546 F.3d 288, 295 (4th Cir. 2008). And he disregards this Court's statement in *Graham* that the applicability of the limitations periods in Section 3731(b) may be subject to "implicit limitation[s]" so as to avoid such "counterintuitive results." 545 U.S. at 418, 421. In any event, there will be ample opportunity for both sides to develop these arguments more fully, if this Court grants review.

Finally, there is no dispute that this case presents an issue of exceptional importance to both plaintiffs and defendants in False Claims Act litigation. *See* Resp. Br. 18–21. Hunt emphasizes that "[i]t is not only defendants who are exposed to the unfairness of the current disparate interpretations." *Id.* at 18. And, as *amicus* U.S. Chamber of Commerce makes clear, False Claims Act actions "touch on nearly every sector of the economy," "frequently last a long time," and can be extremely costly for defendants. Br. of Chamber of Commerce 16. Given the prevalence and significance of False Claims Act litigation, there should be a nationally uniform standard for deciding whether a False Claims Act suit is timely. As all parties agree, this Court should grant review to establish that nationwide standard and to provide certainty for False Claims Act litigants.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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